In the High Court of Uttaranchal, at Nainital
Writ Petition No. 299 of 2003 (S/B)

B.S. Joshal S/o of M.S. Joshal
Station Engineer, Doordarshan
Maintenance Centre, Near Holiday Home,
Almora ..... Petitioner.

Versus

3- Union of India through
Secretary, Ministry of I & B
Shastri Bhawan, New Delhi.

4- Director General, All India Radio
Akashwani Bhawan Parliament Street,
New Delhi ..... Respondents.

Sri D.S. Patni, learned counsel for the petitioner.
Mrs. Anjali Bhargava, Additional S.C. for Union of India.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 19-04-2006

By way of this writ petition, the following relief have been claimed:-

(C) To issue a writ, order or direction in the nature of certiorari quashing the order dated 3-1-2003, passed by Central Administrative Tribunal, Principal Bench, Delhi (Annexure No. 1 to the writ petition).

(D) To issue a writ, order or direction in the nature of mandamus commanding the respondents to promote the petitioner from the date juniors to him were promoted on the post of Senior Time Scale, pursuant to revised seniority list dated 15-7-1991 with all consequential benefits including arrears of pay and allowances along with 18% interest.

2- Brief facts of the case are that the petitioner joined as direct recruit Junior Scale Group 'A' Officer and presently is a member of the Indian Broadcasting (Engineering) Service. The petitioner as per the seniority list issued on 15-7-1991 was placed at serial No. 828. The grievance of the petitioner is that he was not considered for

promotion, despite the recruitment rules, in which it is envisaged that if an officer appointed to any post in the service is considered for promotion to a higher post, all persons senior to him in the grade have also to be consider notwithstanding that they have not the requisite number of years of service. The juniors to the petitioner have been considered for the said promotion. As the petitioner has a right to be considered as per the recruitment rules and the executive instructions laying down that the petitioner could not be promoted being on probation, cannot override the recruitment rules.

4- The petitioner filed the claim petitioner before the Central Administrative Tribunal to redress his grievance and the Central Administrative Tribunal dismissed his claim petition vide judgment and order dated 3-1-2003 (Annexure No.1 to the writ petition).

5- Feeling aggrieved by the aforesaid impugned judgment passed by the Central Administrative Tribunal, this writ petition has been filed before this court.

6- The counter affidavit has been filed by the respondents stating therein that the petitioner wants his promotion for the vacancies that occurred in the year 1988-89 in which one T. Sannapa, junior to him, was considered and was promoted. As the petitioner has joined the service on 10-7-1989 and the crucial date for determining the eligibility for promotion was 1.10.1988, hence T. Sannapa, who was junior to the petitioner, was promoted being a departmental candidate, who joined as Junior Time Scale Officer on 4.6.1984. The appointment to Junior Time Scale was made 50% by direct recruitment and 50% by promotion, therefore, on the crucial date for the Departmental Promotion Committee meeting the petitioner was not in service, hence he was not considered for promotion.

7- Heard learned counsel for the parties and perused the record.

8- The Indian Broadcasting (Engineers) Service Rules, 1981 have been framed in exercise of the power under Article 309 of the Constitution. Rule -3 provides for constitution of the Indian Broadcasting (Engineer) Service Rule-9 says that every Officer on appointment to the service either by direct recruitment or by promotion in Junior Time Scale shall be on probation for a period of two years. The said Rule reads as follows:-

"Probation:

(1)Every Officer on appointment to the Service either by direct recruitment or by promotion in Junior Scale shall be on probation for a period of two years;

Provided that the Controlling Authority may extend or curtail the period of probation in accordance with the instructions issued by Government from time to time;

Provided further that any decision for extension of a probation period shall be taken within eight weeks after the expiry of the previous probationary period and communicated in writing to the concerned officer together with the reasons for so doing within the said period.

(2)On completion of the period of probation or any extension thereof, Officers shall, if considered fit for permanent appointment, be retained in their appointments on regular basis and be confirmed in due course against the available substantive vacancies, as the case may be.

(3)If, during the period of probation or any extension thereof, as the case may be, Government is of the opinion that an Officer is not fit for permanent appointment, Government may discharge or revert the candidate to the post held by him prior to his appointment in the Service, as the case may be, or pass such orders as they deem fit.

(4) During the period of probation or any extension thereof, candidates may be required by Government to undergo such course of training and instructions and to pass such examinations and tests (including examination in Hindi) as Government may deem fit, as a condition to satisfactory completion of the probation.

Schedule-IV further prescribes about the composition of the Departmental Promotion Committee meetings and Note-3 in this regard runs as under:-

Note 3: If an officer appointed to any post in the service is considered for the purpose of promotion to a higher post, all persons senior to him in the grade shall also be considered

notwithstanding that they may not have rendered the requisite number of years of service."

9- Learned counsel for the petitioner has contended that even if when one T.Sannapa was promoted, the petitioner was on probation, hence he has a right to be considered for promotion because there is no bar in this regard in the recruitment rules.

10- The aforesaid position thus transpires that for promotion 50% of the posts have to be filled from direct recruitment and 50% by promotion. The petitioner joined the service on 10-7-1989 and the Departmental Promotion Committee meeting in this regard had been held with respect to the officers who were on service as on 1-10-1988. Therefore, when the Departmental Promotion Committee meeting took place, all the concerned persons, who were to be considered for promotion, were in service. As the petitioner was not in service on that date, therefore, he could not contend and urge that because he was senior to others irrespective of his being on probation, he should be considered.

11- The writ petition thus lacks merit and is liable to be dismissed.

12- The writ petition is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB